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STATE OF TENNESSEE
DEPARTMENT OF HEALTH

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IN THE MATTER OF:

BRIAN S. WAGGONER, M.D.
RESPONDENT

COOKEVILLE, TENNESSEE
TENNESSEE LICENSE NO. 27530

BEFORE THE SECRETARY OF STATE
OF MEDICAL EXAMINERS

DOCKET NO. 17.18-139095A

FINAL ORDER

This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the "Board"), pursuant to a Notice of Charges and Memorandum for Assessment of Civil Penalties issued against the Respondent. Presiding at the hearing was the Honorable Rachel Waterhouse, Administrative Judge, assigned by the Secretary of State. The Division of Health Related Boards of the Tennessee Department of Health was represented by Assistant General Counsel Andrew W. Coffman. The Respondent, Brian Waggoner, M.D., (hereinafter "Respondent"), was present and represented by counsel, Thomas Wiseman, Kimberly Silvus, Gail Ashworth, and Anne Frazier. After consideration of the Notice of Charges, the evidence presented by both parties, arguments of counsel, and the record as a whole, the Board finds as follows:

I. FINDINGS OF FACT

- I. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 27530 by the Board.

2. From at least December 2010 to December 2014, Respondent provided treatment that included prescribing narcotics and other medications and controlled substances in amounts and/or for durations not medically demonstrated for a diagnosed condition for the following patients (*initials used to maintain patient confidentiality*): B.A., M.A., N.A., K.B., J.B., R.C., L.E., G.G., E.H., J.K., J.M., J.S., A.S., and J.C.
3. This prescribing included large doses of opioids in combination with other controlled substances without proper demonstration of need.
4. Many of the patients were prescribed controlled substances without objective evidence to support a diagnosis for a condition that might require the prescribing of controlled substances.
5. Respondent also regularly prescribed benzodiazepines to patients without any objective evidence that the patients suffered from a condition which would require the prescribing of benzodiazepines.
6. From December 2010 to December 2014, Respondent failed to make appropriate, individualized diagnoses and/or failed to document adequate support for diagnoses sufficient to justify the treatment rendered and failed to integrate consultations, previous hospitalizations and other medical information in the chart into the treatment plan for several patients.
7. From December 2010 to December 2014, Respondent prescribed controlled substances and other medication without documenting a written treatment plan with regard to the use of controlled substances and other medication.
8. Respondent engaged in a pattern of prescribing opioids to patients without documenting consideration of other alternative modalities of therapy.

9. Respondent began prescribing controlled substances without documenting informed consent or providing his patients with information about the risks and benefits of the controlled substances prescribed.
10. From December 2010 to December 2014, Respondent prescribed narcotics and/or other controlled substances when the quantity, duration, and method was such that the patient would likely become addicted to the habit of taking said controlled substances, failed to consistently monitor for or seek out and respond to signs of abuse, and failed to make a bona fide effort to cure the habit of such persons or failed to document any such effort.
11. The Respondent failed to monitor each of the patients at issue for signs of abuse, addiction, and diversion related to the controlled substances prescribed. Between December 2010 and December 2014, modalities such as conducting pill counts, utilizing urine drug screens, and checking the CSMD were not routinely used.
12. Beginning in December 2010, as testified to by Dr. Jonathan Butler, the standard of care required a practitioner to conduct at least yearly urine drug screen for patients being prescribed chronic controlled substances. Respondent regularly failed to conduct yearly drug screens on the patients to whom he was prescribing controlled substances. Additionally, Respondent failed routinely to conduct drug screens even when a clinical suspicion should have been raised and a drug screen was required by the standard of care.
13. Beginning on April 1, 2013, state statute required Respondent to check the CSMD yearly for each of the patients to whom he was chronically prescribing controlled substance opioids. Respondent failed to meet this standard of care.

14. Respondent ignored reported symptoms and actions which a reasonable physician would have known indicated potential prescription drug abuse, including patients who were filling multiple controlled substance prescriptions in a single month.
15. Likewise, Respondent failed to counsel patients regarding controlled substance abuse, despite the fact that the charts at issue indicate the patients had a history of past drug abuse.
16. The Board finds that Respondent's treatment of the patients in the charts presented for review was below the standard of care. The Board finds that the standard of care for prescribing controlled substances is contained in our rules at Rule 0880-02-.14(7)(a), such that the medical record must demonstrate a documented medical history and appropriate physical examination, including an assessment for the potential for substance abuse, diagnostic and laboratory tests consistent with good care, a written treatment plan tailored to the individual patient, documented discussion of the risks and benefits of the treatment options and periodic review of the treatment plan. Assessment for potential for substance abuse and periodic review of the treatment plan also require appropriate response to signs of abuse and/or diversion by the patient.

II. CONCLUSIONS OF LAW

The facts as found in Section I of this Order are sufficient to establish violations by Respondent of the following statutes or rules which are part of the provisions of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board of Medical Examiners is authorized:

17. The facts in Section I constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(1) which authorizes disciplinary action against a Respondent who has engaged in unprofessional, dishonorable, or unethical conduct.
18. The facts in Section I constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(4) which authorizes disciplinary action against a Respondent who is guilty of gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice.
19. The facts in Section I constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(12) which authorizes disciplinary action against a Respondent who is guilty of dispensing, prescribing or otherwise distributing any controlled substance or other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition.
20. The facts in Section I constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to TENN. CODE ANN. § 63-6-214(b)(13) which authorizes disciplinary action against a Respondent who is guilty of dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug if such person is addicted to using controlled substances without making a bona fide effort to cure the habit of such patient.

21. The facts in Section I constitute a violation of Rule 0880-02-.14(7)(a) of the Official Compilation Rules and Regulations of the State of Tennessee entitled General Rules and Regulations Governing the Practice of Medicine and promulgated by the Tennessee State Board of Medical Examiners which authorizes disciplinary action as follows:

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214(b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it; along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action to protect the health, safety, and welfare of people in Tennessee.

IV. ORDER

THEREFORE, in consideration of the above Findings of Fact and Conclusions of Law, it is **ORDERED, ADJUDGED, and DECREED** as follows:

22. Respondent's Tennessee medical license number 27530 is hereby placed on **PROBATION** for a period of not less than three years from the entry of this Order. Respondent acknowledges that such probation is an encumbrance on his license. Respondent must petition for an Order of Compliance and appear personally before the Board for the probation of Respondent's license to be lifted.
23. Respondent shall strictly adhere to the Tennessee Chronic Pain Guidelines, as amended from time to time, including, but not limited to, the maximum opioid dose (currently 120 Morphine Equivalent Daily Dose units) for a physician to prescribe prior to referring the patient to a pain specialist for a consultation and/or management. Should Respondent fail to adhere to the Tennessee Chronic Pain Guidelines he shall be in violation of this Order.
24. Respondent shall be prohibited from prescribing controlled substances until he enters an agreement obtaining practice monitoring.
25. Respondent shall obtain practice monitoring through Affiliated Monitors or another practice monitoring program preapproved by the Board's Consultant within thirty (30) days of the entry of this Order. The monitoring agreement shall require the following:
- i. The monitoring shall continue for a period of at least two (2) years.
 - ii. Respondent shall receive additional training in appropriate prescribing of controlled medication and medical record keeping, if recommended by the practice monitor or practice monitoring program. Said instruction shall be in addition to any continuing medical education required to maintain licensure.
 - iii. Respondent shall not have less than ten (10) of his patients' records for patients seen within the prior ninety (90) days receiving controlled

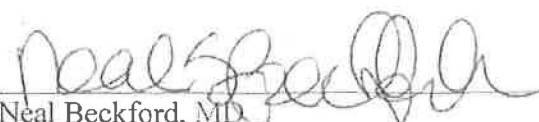
substances reviewed by the practice monitor every ninety (90) days. The practice monitor shall determine which records to review and may at their discretion review more than ten (10) of the Respondent's controlled substance records. If Respondent has not prescribed controlled substances to at least ten (10) patients during a prior ninety (90) day period, Respondent shall notify the practice monitor of such, and submit to the practice monitor a printout of the controlled substance monitoring database for at least the prior ninety (90) day period and all patients' records for any patients who were prescribed controlled substances during that time period.

- iv. The monitoring agreement must contain terms that provide adequate safeguards protecting protected health information and electronic protected health information to the satisfaction of Respondent's employer.
- v. Respondent shall comply with all recommendations of the practice monitor program.
- vi. The Respondent shall be solely responsible for the timely payment of all costs associated with the practice monitor program.
- vii. Respondent shall cause the practice monitor to issue a report to the Board's Consultant every three (3) months beginning three (3) months after the entry of this Order detailing the findings of the practice monitor in regards to the Respondent's:
 - 1. Compliance with practice monitor's recommendations,
 - 2. Completion of any educational program prescribed by the practice monitor,

3. Respondent's prescribing practices,
 4. Respondent's medical record keeping, and
 5. Respondent's treatment of chronic or intractable pain.
26. Respondent must enroll in and successfully complete within one hundred eighty (180) days of entry of this Order, the three (3) day medical course entitled "*Intensive Course in Medical Documentation*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course pre-approved by the Board's Consultant. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243.**
27. Respondent must enroll in and successfully complete, within one hundred eighty (180) days of the entry of this Order, the three (3) day medical course entitled, "*Prescribing Controlled Drugs: Critical Issues and Common Pitfalls*" offered by Vanderbilt University Medical Center or an equivalent course approved in advance in writing by the Board's Medical Director. Within thirty (30) days after completion of such course, Respondent shall mail or deliver proof of compliance with this course requirement to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243.**
28. Respondent shall obtain a clinical competence evaluation and report from the Center for Personalized Education for Physicians. Such evaluation and report shall include a neurological and psychological component. Respondent shall obtain such an evaluation

and report within six (6) months of the entry of this Order. Respondent shall provide a copy of the report from this evaluation to the Board.

29. Respondent shall pay fourteen (14) type A civil penalties of one thousand dollars (\$500.00) each, one for each patient for whom Respondent's care fell below the standard of care for a total penalty of seven thousand dollars (\$7,000). These penalties shall be paid by submitting a certified check, cashier's check or money order payable to the State of Tennessee, which shall be mailed or delivered to Office of Investigations; Attn: Disciplinary Coordinator; Tennessee Department of Health; 665 Mainstream Drive; Nashville, Tennessee 37243. These civil penalties are due within one year of the entry of this Order.
30. Respondent must pay, pursuant to TENN. CODE ANN. § 63-1-144, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed one hundred thousand dollars (\$100,000.00).
31. Any and all cost shall be paid in full within one year after the issuance of the Assessment of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee**, Department of Health. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee**. A notation shall be placed on said money order or such check that it is payable for the Assessment of Costs of Brian Waggoner, Docket No. 17.18-139095A.



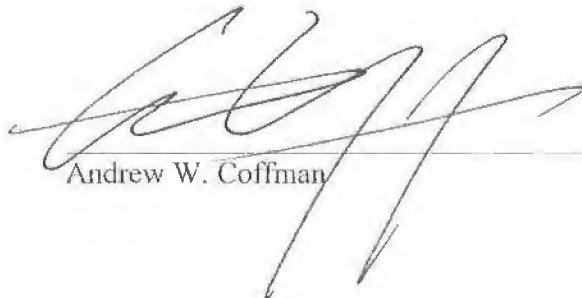
Neal Beckford, MD
Tennessee Board of Medical Examiners

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent and Respondent's counsel by United States Mail at the following addresses:

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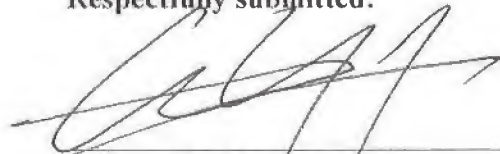
RECONSIDERATION, ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. TENN. CODE ANN. §4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. TENN. CODE ANN. §4-5-316.

Finally, a party may seek judicial review by filing a petition for review in the Chancery Court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. TENN. CODE ANN. § 4-5-322.

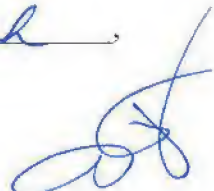
Respectfully submitted:



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CERTIFICATE OF FILING

This Order was received for filing in the Office of the Secretary of State, Administrative Procedures Division, and became **effective** on the 1 day of March, 2019.


J. Richard Collier
Richard Collier, Director
Administrative Procedures Division